CONTRACT—CUSTOM AND USAGE AS AFFECTING A WRITTEN CONTRACT.—P made a contract with D, selling him 50,000 tons of coal to be shipped in twelve equal monthly instalments. Coal was shipped but never the full monthly quota. D paid for the coal as it was shipped for nine months but refused to pay for the amount shipped during the last three months. P brings this action to recover the contract price for the coal delivered, averring, in answer to the claim of D for damages because of failure to deliver the full monthly instalments, an established trade usage. That usage is that all contracts for the sale and delivery of coal are shipped subject to the contingency that the seller can obtain cars to ship the full amount he has contracted to deliver. If sufficient cars cannot be obtained, the coal shipped shall be apportioned pro rata among the holders of contracts. P avers that the contract between himself and D was intended to be subject to this usage of the trade. *Held,* the trade usage averred is an incident annexed to and incorporated by implication into the written contract; judgment for P. *Nicoll* v. *Pittsvein Coal Co.* (C. C. A., 2nd Circ., 1920), 269 Fed. 968.

The parol evidence rule in principle does not permit a written contract to be altered, contradicted or varied by parol evidence. *Nichols* v. *Godts,* 10 Exch. 191; WILLISTON, CONTRACTS, § 631. But among the exceptions to this rule is the admission of parol evidence to establish a trade usage or a custom, with reference to which the written contract was made. *Humfrey* v. *Dale,* 7 E. & B. 266. Usually the distinction between custom and trade usage is disregarded. Custom is a usage which has become law by long and uniform practice. It is part of the common law. *Wills* v. *Bailey,* 49 N. Y. 464; *Eames* v. *Claflin Co.,* 239 Fed. 631; WILLISTON, CONTRACTS, § 649. Usage or trade usage derives its efficacy from the assent of the parties. If the usage is proved, it enters into the obligations of the parties. Usage may be proved to show that words of a clear meaning were used in the contract in a different sense. *Soper* v. *Tyler,* 77 Conn. 104. Or usage may be shown not only to elucidate the contract, but for the purpose of completing it by annexing incidents to it. *The Delaware,* 14 Wall. 579. When tradesmen make a contract they, without thinking of the matter, write on the basis of a large number of customs or trade usages which they take as a matter of course. They set down in the contract only those terms necessary to be determined in that case by specific agreement, leaving to implication those general and unvarying incidents which a uniform usage of the trade would annex. *Humfrey* v. *Dale, supra.* If nothing is said concerning the usage, it naturally is included. If the parties wished to exclude the application of the usage, they would naturally exclude it in express terms. *Hostetter* v. *Park,* 137 U. S. 30; *Johnson* v. *Norcross,* 209 Mass. 445. The intention not to adopt the usage in the written contract may also be shown by the circumstances or the construction of the whole contract. It depends largely on the facts of each case. *Moore* v. *United States,* 196 U. S. 157. It need not be excluded in direct terms necessarily. The usage to be valid must be reasonable and legal, *Eames* v. *Claflin Co., supra.* It is often said the usage must be general but this goes rather to the question of whether the parties contracted

with reference to the usage. WILLISTON ON CONTRACTS, § 660. The party seeking to establish the usage must show the other was aware of the usage or that the usage was so well defined and so generally adopted by those in the trade, that he ought to have known of it. *Rostetter* v. *Reynolds,* 160 Ind. 133; *Black* v. *Ashley,* 80 Mich. 90. Whether the usage exists is a matter of fact for the jury, as also is the question whether the parties have adopted the usage. *Chicago Co.* v. *Tilton,* 87 Ill. 547; *Scott* v. *Brown,* 60 N. Y. S. 511. In the principal case the trade usage alleged by P complies with the requirements of reasonableness and legality and was known to D. For nine months D conformed to the usage. This was evidence of the usage as well as of D's knowledge and intention of contracting subject to the usage. The court and jury properly found that the usage existed, was adopted by the parties and became a part of their contract.

CONTRACTS—"INFORMATION" AS THE CONSIDERATION FOR A CONTRACT.—Plaintiff told defendant's officials that he had acquired information which would be of great value if used in the operation of defendant railroad. Thereupon the officials agreed that if plaintiff would submit his proposition and if the same was acted upon they would pay plaintiff 5% of the proceeds. Plaintiff submitted his proposition, to-wit: "The selling of advertising space in railroad stations, cars, etc." Although the road had been in operation several decades, this idea had never occurred to the defendant's officials as a source of revenue. The idea was used and advertising space sold with profit, but defendant refused to pay plaintiff his commissions. In an action on the contract, *held,* the contract was fatally defective for want of consideration. *Masline* v. *N. Y., N. H. & H. R. Co.* (Conn., 1921), 112 Atl. 639.

This is a case of first impression, though the applicable underlying principles are well settled. The court's decision is based on the theory that when one offers "information" as consideration for a contract the information must consist of nothing less than *new* ideas, not known to the promisor and not generally known to the world at large. But since selling advertising space for profit is a well known commercial enterprise, the plaintiff had proferred nothing more substantial than a "bare idea," valueless as consideration. As authority to substantiate its position the court cited *Stein* v. *Morris,* 120 Va. 390, and *Bristol* v. *Equitable Life Assurance Society,* 5 N. Y. Supp. 131, but in each of these cases the plaintiff was seeking to protect an idea *as property* against its use by one who, having fortuitously learned of the idea, used it. No question of contract was involved and hence the decisions cannot properly be regarded as decisive of the facts of the principal case. Considerable reliance was also placed upon synonyms given for "information" in Murray's "New English Dictionary," namely "news" and "intelligence." But synonyms are dangerous and must be used with caution. A far more accurate definition is the one actually given for the word in the same source, namely, "Information is that which one is told." Everyday usage treats the term in this light, and non-technical terms in contracts should